

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CA 06-530

SHIRLEY WHITTEN

February 14, 2007

APPELLANT

APPEAL FROM THE SALINE COUNTY
CIRCUIT COURT
[NO. CV06-137-1]

V.

GREGORY B. RICH AND KAREN
RICH

HONORABLE ROBERT W. GARRETT,
JUDGE

APPELLEES

DISMISSED

Sarah J. Heffley, Judge

This is an appeal from an order granting specific performance of a real-estate contract. Appellant Shirley Whitten appeals from that order, arguing that the trial court erred in its interpretation of the agreement. Appellees, Gregory and Karen Rich, have cross-appealed the trial court's decision declining their request for attorney's fees. We cannot reach the merits of these issues and must dismiss the appeal without prejudice for the lack of a final, appealable order.

On January 10, 2006, the parties entered into a contract for appellees to purchase appellant's home in Benton. The closing was to take place on January 31. Appellees went

forward with the closing on the scheduled date, but appellant refused to participate. Consequently, appellees filed this action for specific performance of the sales contract. Included in their complaint was a request for damages flowing from appellant's refusal to complete the transaction.

The order granting specific performance from which this appeal is taken does not dispose of appellees' claim for damages. According to a subsequent order, the trial court delayed consideration of appellees' damage claims pending the outcome of this appeal.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure - Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. Whether an order is final and appealable is a matter going to the jurisdiction of the appellate court, and it is an issue that the appellate court has a duty to raise on its own motion. *Foreman v. Arkansas Dep't of Human Services*, 78 Ark. App. 48, 82 S.W.3d 176 (2002). An order is not final when it adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. *Koonce v. Mitchell*, 341 Ark. 716, 19 S.W.3d 603 (2000). There is no final order where the determination of damages is reserved for a later date. *Mueller v. Killam*, 295 Ark. 270, 748 S.W.2d 141 (1988).

Arkansas Rule of Civil Procedure 54(b) allows a trial court, when it finds no just reason for delaying an appeal, to direct entry of a final judgment as to fewer than all the claims or parties by executing a certification of final judgment as it appears in Rule 54(b)(1). Absent the required certification, any judgment, order, or other form of decision

that adjudicates fewer than all the claims or rights and liabilities of fewer than all the parties does not terminate the action. *Brasfield v. Murray*, ___ Ark. App. ___, ___ S.W.3d ___ (Sept. 20, 2006).

The order appealed in this case does not dispose of appellees' claims for damages, and there was no Rule 54(b) certification made by the trial court. Accordingly, we do not have jurisdiction to entertain this appeal.

Dismissed.

HART and MARSHALL, JJ., agree.